

Appendix F

Regulation Chapter Name: Home and Community-Based Services Waiver for Individuals with Brain Injury (Residential Habilitation and Day Habilitation, Supported Employment)						
Reference: COMAR 10.09.46						
http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=10.09.46.*						
Service Setting						
Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment						
#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
1a	1915c: §441.301(c)(4)(i) 1915i: §441.710(a)(1)(i) 1915k: §441.530(a)(1)(i) The setting is integrated in the greater community	X			COMAR 10.09.46.04 A. The program services and supports shall: (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities; (2) Promote the use of community resources to integrate the individual into the community.	
1b	The setting supports full access of individuals receiving Medicaid HCBS to the greater community	X			COMAR 10.09.46.04 A. The program services and supports shall: (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities; (2) Promote the use of community resources to integrate the individual into the community.	
1c	The setting supports opportunities to seek employment and work in competitive integrated settings	X			COMAR 10.09.46.04 A. The program services and supports shall : (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities.	

Service Setting

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
1c	The setting supports opportunities to seek employment and work in competitive integrated settings	X			COMAR 10.09.46.09 B. The covered services shall: (1) Include a work program that includes supports necessary for the participant to achieve desired outcomes established in the waiver plan of care; (2) Include rehabilitation activities needed to sustain the participant's job including support and training; (3) Consist of training, skill development, and paid employment for participants: (a) For whom competitive employment at or above the minimum wage is unlikely; and (b) Who, because of disabilities, need intensive ongoing support to perform in a work setting; (4) Be provided to help individuals obtain and maintain paid work in integrated community settings; and (5) Include transportation or the coordination of transportation between a participant's residence and the supported employment job site.	
1d	The setting supports individuals to engage in community life	X			COMAR 10.09.46.04 A. The program services and supports shall : (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities; (2) Promote the use of community resources to integrate the individual into the community.	
1e	The setting supports individuals to control personal resources	X			10.22.04.02 Values to be Considered in the Development of the IP. B. Individual rights, which include: (6) Having one's money and belongings secured; and (7) Having access to one's money and belongings;	This remediation will fall under COMAR 10.09.36.

Service Setting

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
1f	The setting supports individuals to receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS	X			10.22.04.02 Values to be Considered in the Development of the IP. G. Community membership and social inclusion by: (1) Having the opportunity to be involved in and contribute to the community; (2) Having the opportunity to participate in community activities of one's choice; (3) Having the opportunity to use the same resources as other people; and (4) Having regular access to recreation and leisure time activities with others. 10.22.08 Chapter 08 Community Residential Services Program Service Plan .05 Setting and Location B. A licensee providing services under this chapter shall make every effort to provide services that are integrated in neighborhoods and communities.	This remediation will fall under COMAR 10.09.36.
2a	1915c: §441.301(c)(4)(ii) 1915i: §441.710(a)(1)(ii) 1915k: §441.530(a)(1)(ii) The setting is selected by the individual from among setting options including non-disability specific settings			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria This is documented in the Freedom of Choice form signed by the participant. The freedom of choice can be found by clicking here
2b	Settings include an option for a private unit in a residential setting			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria

Service Setting

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
2c	The setting options are identified and documented in the person-centered service plan	X			Chapter 05 The Individual Plan	
2d	The settings options are based on the individual's needs and preferences	X			COMAR 10.22.04.02 Values to be Considered in the Development of the IP. (2) Having choices about the following: (a) Where to live and with whom, Chapter 05 The Individual Plan 10.22.05.02 B. The IP is a written plan which includes: (13) A determination of whether the needs of the individual could be met in more integrated settings	This remediation will fall under COMAR 10.09.36.
2e	For residential settings, options are based on resources available for room and board	X			COMAR 10.22.04.02 Values to be Considered in the Development of the IP. 10.22.08.03 Community Residential Services Program Service Plan C. The range of community residential service options available to an individual may be limited by resources or lack of available sites.	This remediation will fall under COMAR 10.09.36.
3a	1915c: 441.301(c)(4)(iii) 1915i: §441.710(a)(1)(iii) 1915k: §441.530(a)(1)(iii) The settings ensures an individual's rights of privacy	X			COMAR 10.22.04.02 Values to be Considered in the Development of the IP. The following values shall be considered in the development of the IP: A. Personal well-being, which includes: (6) Having the time, space, and opportunity for privacy;	This remediation will fall under COMAR 10.09.36.
3b	The settings ensure dignity and respect	X			COMAR 10.22.04.02 Values to be Considered in the Development of the IP. D. Respect and dignity, which includes: (1) Being treated with courtesy and respect; (2) Being treated with warmth and caring; (3) Receiving positive recognition; (4) Being spoken to and treated in an age-appropriate manner; and (5) Living and working in places that reflect things that are valued;	This remediation will fall under COMAR 10.09.36.

Service Setting

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
3c	The settings ensure freedom from coercion	X			See 10.22.04.02 Values to be Considered in the Development of the IP. B. Individual rights, which include: (1) Having the same rights and protections as all other citizens under the laws and Constitution of Maryland and the United States; (3) Being free from abuse, neglect, and mistreatment;	This remediation will fall under COMAR 10.09.36.
3d	The settings ensure freedom from restraint	X			See 10.22.04.02 Values to be Considered in the Development of the IP. A. Each individual is entitled to the basic rights set forth in Health-General Article, 7-1002-----7-1004, Annotated Code of Maryland, unless the individual's team decides it is necessary to restrict a right. If the restriction is due to a challenging behavior, the licensee shall follow the procedures outlined in COMAR 10.22.10. If it is necessary to restrict a right not related to a challenging behavior, the standing committee shall review, approve, and establish the time frame for the restriction. The licensee shall: (1) Document in the IP the: (a) Right being restricted, (b) Reason for the restriction, (c) Conditions under which the restriction is employed, (d) Efforts to restore the right to the individual, and (e) Conditions under which the right would be restored; (2) Comply with COMAR 10.22.10.06 D and E; and (3) Ensure that the restriction: (a) Represents the least restrictive, effective alternative, and	The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria This remediation will fall under COMAR 10.09.36.

Service Setting

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
3d	The settings ensure freedom from restraint	X			(b) Is only implemented after other methods have been systematically tried and objectively determined to be ineffective. B. Each licensee shall provide for the preservation of each individual's fundamental rights in accordance with Health-General Article, §7-1003, Annotated Code of Maryland. C. Each licensee shall ensure that the individual and the individual's family is made aware of and given a copy of these rights, and that they are posted in accordance with Health-General Article, §7-1002, Annotated Code of Maryland.	The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria This remediation will fall under COMAR 10.09.36.
4a	1915c: 441.301(c)(4)(iv) 1915i: §441.710(a)(1)(iv) 1915k: §441.530(a)(1)(iv) The settings optimize, but does not regiment, individual initiative, autonomy			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria. The Department wrote a memo to clarify. To review the memo please click here .
4b	The settings optimize independence in making life choices	X			COMAR 10.09.46.04 A. The program services and supports shall : (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities; (2) Promote the use of community resources to integrate the individual into the community. See also 10.22.04.02 Values to be Considered in the Development of the IP.	This remediation will fall under COMAR 10.09.36.

Service Setting

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
4c	The settings optimize independence in daily activities	X			COMAR 10.09.46.04 A. The program services and supports shall : (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities; (2) Promote the use of community resources to integrate the individual into the community.	
4d	The settings optimize independence in the physical environment	X			COMAR 10.09.46.04 A. The program services and supports shall : (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities; (2) Promote the use of community resources to integrate the individual into the community.	
4e	The settings optimize independence with whom to interact.	X			COMAR 10.09.46.04 A. The program services and supports shall : (1) Maximize the level of functioning of an individual with BI through assistance and support with independent living, self-care skills, and social skills in an environment which encourages the participant's ability to make decisions about the individual's life and create opportunities for choice regarding home, school or work, and community activities; (2) Promote the use of community resources to integrate the individual into the community.	

Service Setting

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units), Day Habilitation, Supported Employment

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
5a	1915c: §441.301(c)(4)(v) 1915i: §441.710(a)(1)(v) 1915k: §441.530(a)(1)(v) The settings facilitates individual choice regarding services and supports			X	See 10.22.04.02 Values to be Considered in the Development of the IP. C. Choice and control, which includes: (1) Being given the opportunity to express choices and opinions; (2) Having choices about the following: (a) Where to live and with whom, (b) The appearance of one's home, (c) The services one receives and from whom, (d) How one spends one's time and with whom, (e) How menus, activities, schedules, and routines are structured, (f) Who advocates for the individual; and (3) Having one's choices and opinions respected and addressed Chapter 05 The Individual Plan B. The IP is a written plan which includes: (2) Preferences and desires identified by and for the individual; 10.22.08.03 Community Residential Services Program Service Plan A. Living in the community involves both a wide range of skills and choices about life style. B. Community residential models accommodate the wide range of choices individuals and their families make about how to live in the community. C. Community residential models are designed to give preference to small and individualized settings. D. Individuals with developmental disabilities have the same range of options about where to live in the community as are available to all people. E. The Administration respects personal choice regarding decisions about where and with whom individuals with developmental disabilities may live.	This remediation will fall under COMAR 10.09.36. The memo regarding choice of services and supports can be viewed by clicking here .

Residential Services - Provider Owned or Controlled Settings

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units)

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
5b	The settings facilitates who provides services and supports	X			COMAR 10.09.46.04 A. The program services and supports shall: (3) Provide services that are: (a) Appropriate to the age of the populations being served; (b) Offered at times and places suitable to the individuals served; and (c) Coordinated by MHA's administrative case manager with other medical rehabilitation, mental health, and primary care services that the individual is receiving.	
6a(1)	1915c: §441.301(c)(4)(vi) 1915i: §441.710(a)(1)(vi) 1915k: §441.530(a)(1)(vi) (A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services			X	See 10.22.08 DDA Community residential service program service plan	The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
6a(2)	The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria

Residential Services - Provider Owned or Controlled Settings

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units)

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
6a(3)	For settings in which landlord tenant laws do not apply, the State ensures that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
6a(4)	The State ensures that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
6b	(B) Each individual has privacy in their sleeping or living unit	X			COMAR 10.22.04.02 Values to be Considered in the Development of the IP. The following values shall be considered in the development of the IP: A. Personal well-being, which includes: (6) Having the time, space, and opportunity for privacy;	This remediation will fall under COMAR 10.09.36.
6b(1)	Units have entrance doors lockable by the individual			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria

Residential Services - Provider Owned or Controlled Settings

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units)

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
6b(2)	Only appropriate staff have keys to the lockable entrance doors			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
6c(1)	(C) Individuals have the freedom and support to control their own schedules	X			COMAR 10.22.04.02 Values to be Considered in the Development of the IP. (2) Having choices about the following: (a) Where to live and with whom, (b) The appearance of one's home, (c) The services one receives and from whom, (d) How one spends one's time and with whom, (e) How menus, activities, schedules, and routines are structured,	This remediation will fall under COMAR 10.09.36.
6c(2)	Individuals have the freedom and support to control their own activities	X			See 10.22.04.02 Values to be Considered in the Development of the IP. (2) Having choices about the following: (a) Where to live and with whom, (b) The appearance of one's home, (c) The services one receives and from whom, (d) How one spends one's time and with whom, (e) How menus, activities, schedules, and routines are structured,	This remediation will fall under COMAR 10.09.36.
6c(3)	Individuals have the freedom to access food at any time			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria

Residential Services - Provider Owned or Controlled Settings

Applicable to the following settings: Residential Habilitation (Group Homes, Alternative Living Units)

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
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6d	(D) Individuals are able to have visitors of their choosing at any time			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
6e	(E) The setting is physically accessible to the individual			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
6f	(F) Individuals sharing units have a choice of roommates in that setting			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
6g	(G) Individuals have freedom to furnish and decorate their sleeping units or living units within the lease or other agreement			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria

Person-Centered Service Plan - Modifications for Restrictive Techniques

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
	1915c: §441.301 1915i: §441.710 1915k: §441.530				See 10.22.10 – DDA behavior support service program service plan	
7	The following requirements must be documented in the person-centered service plan upon any modification of the additional conditions:					
7a	*Identify a specific and individualized assessed need.	X				The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria
7b	*Document the positive interventions and supports used prior to any modifications to the person-centered service plan.	X			COMAR 10.22.10 A. The licensee shall ensure that the use of restrictive techniques in any BP: (1) Represents the least restrictive, effective alternative, or the lowest effective dose of a medication; and (2) Is only implemented after other methods have been: (a) Systematically tried, and (b) Objectively determined to be ineffective.	

Person-Centered Service Plan - Modifications for Restrictive Techniques

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
7b	*Document the positive interventions and supports used prior to any modifications to the person-centered service plan.	X			<p>B. The licensee shall collect and present objective data to the authorizing licensed health care practitioner to indicate whether the restrictive technique being used is effective in reducing the individual's challenging behavior..</p> <p>C. The licensee shall:</p> <p>(1) Convene the team within 5 calendar days after an emergency use of a restrictive technique to review the situation and action taken;.</p> <p>(2) Determine subsequent action include whether the development or modification of a BP is necessary; and</p> <p>(3) Document that the requirements of this regulation have been met.</p>	
7c	*Document less intrusive methods of meeting the need that have been tried but did not work.	X			<p>A. The licensee shall ensure that the use of restrictive techniques in any BP:</p> <p>(1) Represents the least restrictive, effective alternative, or the lowest effective dose of a medication; and</p> <p>(2) Is only implemented after other methods have been:</p> <p>(a) Systematically tried, and</p> <p>(b) Objectively determined to be ineffective.</p> <p>B. The licensee shall collect and present objective data to the authorizing licensed health care practitioner to indicate whether the restrictive technique being used is effective in reducing the individual's challenging behavior.</p> <p>C. The licensee shall:</p> <p>(1) Convene the team within 5 calendar days after an emergency use of a restrictive technique to review the situation and action taken;</p> <p>(2) Determine subsequent action include whether the development or modification of a BP is necessary; and</p> <p>(3) Document that the requirements of this regulation have been met.</p>	

Person-Centered Service Plan - Modifications for Restrictive Techniques

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
7d	*Include a clear description of the condition that is directly proportionate to the specific assessed need.	X			05 Behavior Plan (BP). (2) Is based on and includes a functional analysis or assessment of each challenging behavior as identified in the IP;	
7e	* Include a regular collection and review of data to measure the ongoing effectiveness of the modification.	X			05 Behavior Plan (BP). A. A licensee shall ensure that a BP is developed for each individual for whom it is required. B. The licensee shall ensure the BP: (2) Is based on and includes a functional analysis or assessment of each challenging behavior as identified in the IP; (3) Specifies the behavioral objectives for the individual, and includes: (9) Specifies the data to be collected to assess progress towards meeting the BP's objectives; and A. The licensee shall ensure that the use of restrictive techniques in any BP: B. The licensee shall collect and present objective data to the authorizing licensed health care practitioner to indicate whether the restrictive technique being used is effective in reducing the individual's challenging behavior.	
7f	*Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria

Person-Centered Service Plan - Modifications for Restrictive Techniques

#	Federal Requirement	OHS Assessment			If standards exist, cite them.	Remediation Strategy
		Compliant	Noncompliant	Absent		
7g	*Include informed consent of the individual.	X			C. Before implementation, the licensee shall ensure that each behavior plan which includes the use of restrictive techniques is: (1) Approved by the standing committee as specified in COMAR 10.22.02.14E(1)(d); and (2) Includes written informed consent of the: (a) Individual, (b) Individual's legal guardian, or (c) Surrogate decision maker as defined in Health-General Article, §5-605, Annotated Code of Maryland.	
7h	*Include an assurance that interventions and supports will cause no harm to the individual.			X		The Department is proposing regulation changes to COMAR 10.09.36: General Medical Assistance Provider Participation Criteria